

STATE OF SOUTH CAROLINA

(Caption of Case)

State Universal Service Support of Basic Local
Service Included In a Bundled Service Offering or
Contract Offering

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2009 - 326 - C

(Please type or print)

Submitted by: Burnet R. Maybank III

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DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☒ Request for item to be placed on Commission's Agenda expeditiously

☐ Other:

INDUSTRY (Check one)

- ☐ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☐ Sewer
☒ Telecommunications
☐ Transportation
☐ Water
☐ Water/Sewer
☐ Administrative Matter
☐ Other:

NATURE OF ACTION (Check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Affidavit | <input checked="" type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input checked="" type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input checked="" type="checkbox"/> Other: Cover Sheet |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

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Burnet R. Maybank, III
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February 17, 2010

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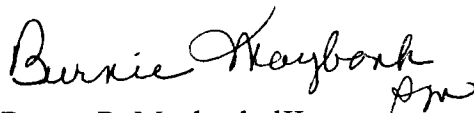
**Re: Docket Number 2009-326-C – State Universal Service Support of Basic
Local Service Included in a Bundled Service Offering or Contract
Offering**

Dear Ladies and Gentlemen:

Enclosed for filing please find a copy of Post-Hearing Brief of Windstream South
Carolina, LLC in connection with the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of this Post-
Hearing Brief as indicated on the attached Certificate of Service.

Very truly yours,



Burnet R. Maybank, III
BRM/sjn
Enclosures

cc: Nanette S. Edwards, Esq. (Letter only Via E-Mail)
All Parties of Record

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2009-326-C

IN RE:

**State Universal Service Support
of Basic Local Service included
in a Bundled Service Offering or
Contract Offering**

**POST-HEARING BRIEF OF
WINDSTREAM SOUTH CAROLINA, LLC**

Windstream South Carolina, LLC (“Windstream”) hereby submits its Post-Hearing Brief in the above referenced docket:

This docket was established for the stated purpose of having the Public Service Commission (“Commission”) examine the issue of whether basic local service should receive state universal service support when it is included in a bundled service offering or contract offering.¹ At the center of this proceeding is S.C. Ann. Sec. 58-9-285 (sometimes herein referred to as the “bundle law”), enacted in 2005, that prevents the Commission from imposing “requirements related to the terms, conditions, rates or availability of any bundled offering or contract offering...or otherwise regulate any bundled offering or contract offering of any qualifying LEC...”² Predictably, the cable companies and competitive carriers (collectively, “CLECs”) have lined up in opposition to continued funding of basic local exchange service that is offered as a part of bundles and contracts. The main thrust of the CLECs’ position is that because the bundle law has allegedly “deregulated” the provision of telecom services when offered in a bundle or contract,

¹ Initial Hearing Officer Directive, Docket 2009-326-C, Document No. 218293.

² S.C. Ann. Sec. 58-9-285(B)(1)and (2)

there is no maximum amount that Carriers of Last Resort (COLRs) can charge for such services and, therefore, the COLRs should be required to forego Universal Service Fund (USF) support for services that can be priced at market rates. (Gillian testimony, Tr. pp. 222-223)

Further, the CLECs expressly advocate that rural subscribers should absorb the entire cost of basic local exchange service by paying unsubsidized rates in high cost areas. (Gillian testimony, Tr. p. 223) While the CLECs, through the testimony of Mr. Gillian, make several arguments to support their position, their position is fundamentally flawed. It goes against the very purpose of the USF – that is, to provide affordable basic local exchange telecommunications service in rural and high cost areas, and that such rates should be reasonably comparable to rates charged for similar services in urban areas.³

This brief will examine some of the CLECs arguments set forth in Mr. Gillian's testimony and will conclude that it is not only lawful, but in the public interest to provide USF support for basic local service that is included in bundled and contract offerings.

1. There is no legal foundation for removing USF support from basic local exchange service included in bundles and contracts.

In 1996 the South Carolina Legislature required the Public Service Commission to establish a Universal Service Fund for distribution to carriers of last resort as an explicit mechanism, in a competitive environment, to provide “universally available basic local exchange telephone service at affordable rates...”⁴ The Commission defined universal service as:

³ See Proceeding to Establish Guidelines for an Intrastate Universal Service Fund , Docket No. 97-239, Order No. 97-753, p. 7, in which the Commission recognizes the Telecommunications Act's basis for policies for the advancement of universal service.

⁴ S.C. code Ann. 58-8-280

The provision of basic local exchange telecommunications service, at affordable rates and upon reasonable request, to all single party residential and single-line business customers within a designated service area.⁵

The CLECs argue that the USF support of basic local service included in bundles is an expansion of the USF fund to support bundles and contract offerings. However, the fund is not being expanded and USF support is not going to bundles and contracts. From the inception of the State USF, consumers have had the opportunity to subscribe to additional services, such as long distance calling and high speed internet, over and above basic local exchange service. Rural consumers have been purchasing such additional services along with basic local exchange service and the service was eligible for USF support. The advent of the bundle does not change this, or somehow “expand” USF funding. Bundled lines that are no longer subject to regulation are no different than other basic local exchange lines coupled with additional products. (Kreutz testimony, Tr. pp. 111-112.) As Mr. Oliver explains, the concept of COLR cost recovery should not be confused with the concept of bundling, which is essentially a marketing tool. (Oliver testimony, Tr. p. 290.) While bundled and contract services are becoming increasingly prevalent in the market, the concept of providing universal service support to COLRs for the underlying basic local exchange telephone service remains the same. (Oliver testimony, Tr. p. 291)

Nor is notice and a separate Commission hearing necessary for the alleged expansion of the USF, as the CLECs argue. (Gillian testimony, Tr. pp. 221 – 222) S.C. Code Ann. 58-9-280(E)(8) requires notice and an opportunity for hearing to “expand the set of services within the definition of universal services...” However, the set of services is not being expanded. As stated above, universal service support applies to the

⁵ In re: Proceeding to Establish guidelines for an Intrastate Universal Service Fund, Order No. 2001-996.

underlying basic local exchange service included in the bundle, not to the bundled offering. Windstream is not expanding the set of services that it offers in basic local exchange service. (Kreutz testimony, Tr. p. 109) These services,⁶ such as local dial-tone with touch-tone, availability of emergency services and directory assistance, are a fixed part of Windstream's basic local exchange service, and do not change, or expand, when basic local exchange service is offered as part of a bundle or purchased on a stand-alone basis. Therefore, no hearing is necessary because the set of services is not expanding.

Furthermore, and fundamentally, there is no suggestion in S.C. Code Ann. 58-9-285 (the bundle law) that the South Carolina legislature intended that a LEC that offers bundles will lose eligibility for USF funding. To the contrary, the legislature indicated its intention that Universal Service Fund support should not be disturbed:

A qualifying LEC or qualifying IXC providing bundled offerings or contract offerings is obligated to provide contributions to the Universal service Fund (USF), and the Commission shall ensure that contributions to the State USF, pursuant to Section 58-9-280(E), are maintained at appropriate levels. Nothing in this section affects the Commission's jurisdiction over distributions from the USF pursuant to Section 58-9-280.⁷

The cardinal rule of statutory interpretation is to ascertain the intent of the legislature. State v. Scott, 351 S.C. 584, 571 S.E. 2d. 700 (2002). A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Davis v. Nations Credit, 326 S.C. 83, 484 S.E. 2d 471 (1997). With no clear legislative intent nullifying the provisions of S.C. Code Ann. 58-9-280 (the USF enabling

⁶ Basic local exchange telecommunications service means for single party residential and single line business customer access to basic voice grade local service with dual tone multi-frequency (DTMF) signaling (i.e., Touch-tone), access to available emergency services and directory assistance, the capability to access interconnecting carriers, access to dual party relay services, access to operator services, one annual local directory listing, and toll limitations at the request of the low income consumer or in order to prevent further losses by the carrier of last resort, for low-income consumers participating in Lifeline (subject to technical feasibility). Proceeding to Establish Guidelines for an Intrastate Universal Service Fund, Docket No. 97-239, Order No. 2001-996, Exhibit A, p. 1.

⁷ S.C. Code Ann. 59-9-285(C) (underscore added)

bill) or the Commission's USF guidelines on USF distributions, there is no compelling statutory argument to support the CLECs contention that USF funding should be removed from basic local service when included in a bundle or contract.⁸

As stated above, the main thrust of the CLECs' argument is that because the bundle law has allegedly "deregulated" the provision of telecom services when offered in a bundle or contract, there is no maximum amount the COLRs can charge for such services and, therefore, the COLRs should be required to forego Universal Service Fund support for these services that they can sell at market rates. (Gillian testimony, Tr. pp. 222-223) This argument is unsupported by legal or logical foundation.

First and foremost, as explained above, the underlying basic local exchange service that is included in the bundle remains unchanged in its scope (set of services offered) and its rate. Second, Windstream's bundles (and presumably all others in this proceeding) are offered at a discount price compared to the same stand-alone services, not a premium price. (Kreutz testimony, Tr. p. 112) Pursuant to S.C. 58-9-285, "each regulated product or service in the offering is available on a stand-alone basis under a tariff on file with the Commission."⁹ Therefore, there is no incentive for the LEC to offer, or the customer to purchase, a bundle priced higher than the sum of stand-alone services. As Mr. Oliver stated, "Customers buy bundles to save money. They expect discounts off stand-alone prices. If an individual service could be purchased at a lower price on a

⁸ As further indication of legislative intent in favor of continued USF funding for basic local exchange service regardless of how it is offered to the consumer, the 2009 Customer Choice and Technology Investment Act provides:

For those LECs that have not elected to operate under this section nothing contained in this section or any subsection shall affect the current administration of the state USF nor does any provision thereof constitute a determination or suggestion that only stand-alone basic residential lines should be entitled to support from the state USF. S.C. Code Ann. 58-9-576

⁹ S.C. Code Ann 58-9-285(A)(1)(a)(ii)

stand-alone basis, customers would simply buy the stand-alone services individually.” (Oliver testimony, Tr. p.287) As such, the CLECs’ concern that USF support will go to services upon which there is no regulated maximum price is unfounded. The prices for bundles offered by the COLRs are essentially price-capped by the tariffed rates of the individual products contained in the bundle.

2. The CLECs’ position is contrary to the public interest.

In addition to erroneously suggesting that there is no maximum rate that COLRs can charge for basic local exchange service, the CLECs also argue that the cost of delivering service to high cost areas should not be shared by the all of the state’s consumers. “There is simply no basis for the Commission to charge every consumer in South Carolina a USF tax to offset any alleged loss experienced by an ILEC because it has chosen to offer a bundle or package of service below cost.” (Gillian testimony, Tr. p. 223) Mr. Gillian further argues that it is not the goal of universal service in South Carolina to ensure that rates and services in rural areas are comparable to those in other areas of the state. (Gillian testimony, Tr. p. 245) As is shown below, these arguments fly in the face of USF policy. They are also a demonstration of how little regard the CLECs have for customers in high-cost areas of the state where they have no intention of providing service.

When establishing the USF guidelines, the Commission recognized that it was essential to mesh the components of state and federal law and the FCC’s Universal Service Order to the greatest extent possible. In doing so the Commission expressly recognized the federal policies regarding the preservation and advancement of universal

service. Among these are the following:

- Quality services at affordable rates.
- Access in rural and high cost areas to telecommunications and information services reasonably comparable to rates charged for similar services in urban areas.
- Specific, predictable and sufficient federal and state support mechanisms necessary to support universal service.¹⁰

Reasonable comparability of rates and services comparable to those available in urban areas is one of the basic principals of South Carolina's universal service program. Likewise is the sharing of the burden of high cost service by all of the state's consumers. All users of the network pay a small surcharge that ensures that the network is available for them to call whomever they please. It directly benefits all users of the telephone network. The ubiquitous network is a public benefit, and maintaining its viability is in the public interest. (Oliver testimony, Tr. p. 304)

Furthermore, the Commission has already addressed this issue. In the Proceeding to Establish Guidelines for the Universal Service Fund,¹¹ the Commission considered the question of whether secondary lines should be eligible for USF support. The competitive carriers opposed USF support for secondary lines. The Commission soundly rejected their argument. The Commission's reasoning was that if the secondary line had to be priced to cover its cost, in "rural areas this could mean the difference between a customer having or not having a second line (internet access, etc.)" The same policy issue is relevant in this proceeding. If bundled lines were not eligible for USF, then customers in rural areas would not have the same benefits that customers in urban areas enjoy because the price of the bundle would have to increase to recover the amount of the cost of the

¹⁰ Proceeding to Establish Guidelines for an Intrastate Universal Service Fund , Docket No. 97-239, Order No. 97-753, p. 7. (Emphasis added)

¹¹ Ibid. at Order No.2001-419.

underlying basic local exchange service. This result is contrary to the policy directives this Commission has set forth for universal service.¹² (Kreutz testimony, Tr. pp. 109-110)

If the Commission grants the CLECs' request and removes universal service funding from local exchange service included in bundles, it will have the very predictable effect of harming the rural and high cost consumer as a result of placing the COLR in the position of having to select whether to continue to offer bundled offerings, raise the price of bundles so as to make it unaffordable, or to reject its COLR designation. (Kreutz Testimony: Tr. p. 146) Mr. Oliver reports that as many as 94% of customers receive bundled offerings. Thus, the removal of USF funding for basic local exchange service in bundled offerings would all but eliminate universal service funding. (Oliver testimony, Tr. p. 302) In any case, the consumer in rural and high cost areas is harmed.

But, it is not only the rural consumer that will be harmed by the removal of universal service support. If the elimination of universal service support forces the rural telephone companies to choose not to offer bundled services then it may deprive the urban consumer of competitive bundled offerings in markets in which the RLEC competes with the CLEC and, most likely, result in higher prices and lack of choice for the all consumer. (Brown testimony, Tr. pp. 21 -22) All the while, the CLECs will reap the financial rewards of keeping potential competitors out of the market for bundled telecom services. (Brown testimony, Tr. p. 22)

There is an overriding public interest in allowing the COLRs to continue to receive USF funding for all basic local exchange services, whether stand-alone or

¹² Proceeding to Establish Guidelines for an Intrastate Universal Service Fund , Docket No. 97-239, Order No. 97-753, p. 7.

provided in a bundle. Any other outcome will ultimately harm the consumers, who will pay in the form of higher rates or fewer service options.

Conclusion

Windstream is requesting that this Commission continue to follow its policy of supporting affordable telecommunications services for all of South Carolina's citizens. This has been the policy of the Commission and is best summed up in following Commission goal:

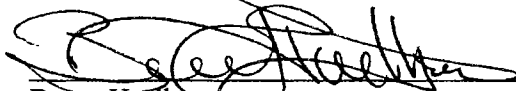
Seek to ensure that within a more competitive utility environment that core or captive customers with little market power are not unduly burdened with the cost of competition and are provided appropriate service and service options.¹³

As has been set forth in the COLRs testimony and in this brief, in order to protect the consumers of this State, the Commission should ensure that basic local exchange service included in bundles and contracts continues to be supported by the Universal Service Fund.

Respectfully submitted,



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¹³ South Carolina Public Service Commission website: www.psc.sc.gov/about/mission/asp

**BEFORE THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA**

Docket Number 2009-326-C

**State Universal Service Support of Basic Local Service Included In a Bundled
Service Offering or Contract Offering**

CERTIFICATE OF SERVICE

The undersigned, Shirley J. Neal, hereby certifies that she is employed by the law firm of Nexsen Pruet, LLC and that she caused a copy of Post-Hearing Brief of Windstream South Carolina, LLC to be served by regular mail and/or email as shown below on the 17th day of February, 2010:

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